



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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25M1

EXAMINER	
ROSENBERGER, R	
ART UNIT	PAPER NUMBER
	12
DATE MAILED:	

25M1

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

03/17/93

ADVISORY ACTION

THE PERIOD FOR RESPONSE:

Is extended to run 6 from the date of the Final Rejection
 continues to run _____ from the date of the Final Rejection
 expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Applicant's response to the final rejection, filed 3-3-93, has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

- a. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
- b. They raise new issues that would require further consideration and/or search. (See Note).
- c. They raise the issue of new matter. (See Note).
- d. They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- e. They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: see below

2. Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. Upon the filing of an appeal, the proposed amendment will be will not be, entered and the status of the claims in this application would be as follows:

Allowed claims: _____

Claims objected to: _____

Claims rejected: 1-15, 17-32

However:

- a. The rejection of claims _____ on references is deemed to be overcome by applicant's response.
- b. The rejection of claims _____ on non-reference grounds only is deemed to be overcome by applicant's response.

4. The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection.

5. The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

The proposed drawing correction has has not been approved by the examiner.

Other

The proposed amendments to the claims filed 3 March 1993 add the word "independent" to the claims, and the remarks accompanying these amendments argue that Howarth does not provide "independent" paths through the specimen being measured. If this is true, than neither does the disclosed invention. In the disclosed invention the different paths through the sample partially overlap; as can be seen in instant figure 1 the two different paths, while being separate at one end (11,12), are the same at the other end (15). Likewise, in Howarth (figure 7, see the discussion of the Howarth reference in the final rejection), the light paths through the sample (16) are separate at one end (61, 62) and are the same at the other end (source). The remarks filed 3 March 1993 defines this overlapping-at-one-end-and-separate-at-the-other-end relationship as being "along a single path, certainly not along independent paths" (page 11, lines 22-23). Since this is the same relationship as in the instant invention, the instant invention does not provide "independent" light paths though the sample, and thus this amendment and argument at least raises questions under 35 USC 112 as to new matter and adequacy of disclosure and as to the clarity and scope of the claims as proposed to be amended.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
15 March 1993



RICHARD A. ROSENBERGER
EXAMINER
ART UNIT 255